PUBLIC PROSECUTOR v. NAGALINGAM & ANOR.

[A.Cr.J. (Kulasekaram J.) November 5, 1970]

[Singapore — Magistrate's Appeal No. 148 of 1970]

Bribery and Corruption — Prosecution for — Consent of Public Prosecutor — Consent not containing enough facts to identify the case to which consent is given — Whether sufficient compliance with requirements of Ordinance — Prevention of Corruption Ordinance, 1960, s. 31.

The accused had been charged with an offence under section 5(a)(i) of the Prevention of Corruption Ordinance, 1960. The learned district judge discharged the accused at the end of the prosecution case as he held that the consent of the Attorney-General for instituting the prosecution against the accused as contained in the document put in as an exhibit in the case was not a sufficient compliance with the provisions of section 31 of the Ordinance. The Attorney-General as Public Prosecutor appealed against the order of the district judge.

Held, dismissing the appeal: the written consent of the Attorney-General in this case did not show on the face of it, in reference to the facts of which particular case the consent was given and, as no additional evidence was called, the prosecution had failed to prove that it had complied with section 31 of the Prevention of Corruption Ordinance.

Cases referred to:-

(1) *Berwin* v. *Donohoe* (1915) 21 C.L.R. 1.

(2) *Chong Tuck Loong* v. *Public Prosecutor* Perak Cr. App. No. 73 of 1952 (unreported).

(3) *Lyn Hong Yap* v. *Public Prosecutor* [1956] M.L.J. 226.

(4) *Public Prosecutor* v. *Choy Kok Kuan* (1958) 3 M.C. 200.

(5) *Gokulchand Dwarkadas Moraka* v. *The King* A.I.R. 1948 P.C. 82.

MAGISTRATE'S CRIMINAL APPEAL.

K. S. Rajah (Deputy Public Prosecutor) for the appellant.

J. B. Jeyaretnam, amicus curiae.

Kulasekaram J.: The first respondent Nagalingam Mathiyooke was charged in the second criminal district court that:

"You, Nagalingam Mathiyooke,

are charged that you, some time between the 28th day of November, 1968 and the 10th day of December, 1968 at No. 50-D, South Bridge Road, Singapore, did corruptly solicit from one Hoon Wee Long @ Woon Chaw Shing gratification in the form of $20,000 worth of shares in the Harbour Bar Snack Bar and Restaurant Company (Private) Limited on account of the Singapore Port Workers' Union having awarded the tender to Hoon Wee Long @ Woon Chaw Shing to run a restaurant at the new Union Building, and you have thereby committed an offence punishable under section 5(a)(i) of the Prevention of Corruption Ordinance, No. 39 of 1960."

and the second respondent Molly Neo was charged that:

"You, Molly Neo,

are charged that you, on or about the 4th day of July, 1969, at the office of M.N. Samy, Asia Insurance Building, Singapore, did corruptly agree to receive for one Nagalingam Mathiyooke, gratification in the form of $20,000 worth of shares in the Harbour Bar Snack Bar and Restaurant Company (Private) Limited on account of the Singapore Port Workers' Union having awarded the tender to one Hoon Wee Long @ Woon Chaw Shing to run a restaurant at the new Union Building, and you have thereby committed an offence punishable under section 5(a)(i) of the Prevention of Corruption Ordinance, No. 39 of 1960."

Both the respondents claimed trial and a joint trial was held. At the end of the prosecution case the learned district judge upheld the defence contention that the consents of the Attorney-General for instituting these prosecutions against both the respondents as contained in the two documents P1A and P2A were not a sufficient compliance with the provisions of section 31 of the Prevention of Corruption Ordinance 1960 hereinafter referred to as the said Ordinance. The learned district judge further ordered that these discharges were not to amount to acquittals.

The Attorney-General as Public Prosecutor now appeals against these orders of the learned district judge in respect of both these respondents.

I shall for purposes of this judgment confine myself to the case of the first respondent only.

As the first respondent was charged with an offence under the said Ordinance, the prosecution must comply with the provisions of section 31 of the said Ordinance in instituting the action.

Section 31 of the said Ordinance reads:

"A prosecution under this Ordinance shall not be instituted except by or with the consent of the Public Prosecutor."

From the records it would appear that when the first respondent was first charged and called upon to plead in the second criminal district court on 25th April 1970 the charge in terms of what I have already set out above, and the consent of the Attorney-General were both put in as exhibits P1 and P1A respectively at the very outset by the court prosecutor senior inspector Joseph Low. The consent P1A of the Attorney-General reads:

"I, TAN BOON TEIK, Attorney-General and Public Prosecutor of Singapore, in pursuance of the powers conferred on me by section 31 of the Prevention of Corruption Ordinance, 1960 (Ord. 39 of 1960: Reprint No. RS(A) 27 of 1966) and of all other powers hereunto me enabling, do hereby consent to the prosecution of one Nagalingam Mathiyooke @ Ismail bin Abdullah of Singapore for an offence under section 5(a)(i) of the aforesaid Ordinance:

AND I do hereby designate any Criminal District Court at Singapore to be the Court of Trial.

DATED at Singapore this 7th day of April, 1970.

Sd. Tan Boon Teik
Attorney-General and
Public Prosecutor
Singapore."

The learned deputy public prosecutor, Mr. Rajah, who argued this appeal on behalf of the Attorney-General, submitted that the provisions of section 31 of the said Ordinance do not require the consent to be in writing nor do they prescribe any particular form for that consent. The Attorney-General can give his consent even orally. The document P1A though it does not set out the facts of the case, nevertheless, names the first respondent as the person against whom the prosecution is to be launched and also sets out the section of the said Ordinance under which the alleged offence would come.

In these circumstances the learned deputy public prosecutor contended that the consent of the Attorney-

General as set out in the document P1A, coupled with the fact that this document P1A was tendered as an exhibit along with the charge P1 at the outset of the proceedings in the district court and the further fact that a deputy public prosecutor conducted the prosecution at the subsequent hearing of this case before the learned district judge all go to show that there has been a sufficient compliance with the provisions of section 31 of the said Ordinance.

In support of his contention the learned deputy public prosecutor referred to the case of *Berwin* v. *Donohoe*.[1] This was an appeal from the Court of Petty Sessions of New South Wales to the High Court of Australia.

One Berwin was prosecuted for an offence under section 3 of the Trading with the Enemy Act 1914. The Act provides (section 3(6)) that "A prosecution for an offence against this section shall not be instituted without the written consent of the Attorney-General". Before the prosecution was instituted the Attorney-General signed a consent as follows:

"The Attorney-General for the Commonwealth of Australia hereby consents to a prosecution being instituted against Alfred George Berwin of Sydney in the State of New South Wales for an offence against the Trading with the Enemy Acts 1914."

The High Court of Australia held that the consent of the Attorney-General in the form set out there was a sufficient compliance with section 3(6) of the Act which I have quoted above. It would appear that in that case, the appeal was on a very narrow point as to whether the consent in that form, as stated above, without setting out the facts of the case, was a sufficient compliance with the requirements of section 3(6) of the Act. There, as the consent had to be in writing, the question was whether the consent, which did not set out the facts of the case and the section of the Act under which the alleged offence came, was a valid document to meet the requirements of the Act. It was not in dispute that the Attorney-General had given his consent. It was only the form of the document that was in issue. In that case Isaacs J. in the course of his judgment said:

"If the defence definitely challenges the fact that the Attorney-General has examined the facts of that particular case, the prosecution may be put to prove that he has; but, as I say, no such challenge was made here. The objection was merely as to the form of the documents."

In the present case the defence did not complain about the form of the document P1A. Under the said Ordinance the consent of the Attorney-General as I have mentioned earlier need not even be in writing. The respondent's contention here, as I see it, is that there is no sufficient evidence in the prosecution case to show that the Attorney-General has consented to this particular prosecution against the respondent.

On the evidence of the document P1A and having regard to illustration (e) of section 115 of the Evidence Ordinance, which says that the court may presume that judicial and official acts have been regularly performed, it is clear that the Attorney-General has consented to the institution of a prosecution against the first respondent for an alleged offence under section 5(1) of the said Ordinance. The question is does this consent relate to this particular case or to some other incident in respect of the same respondent under the same section of the said Ordinance.

The learned deputy public prosecutor contended that the consent as at P1A taken with all the other circumstances of this case clearly show that the consent of the Attorney-General was given to this particular case.

Now what are the other circumstances of the case on which he relies for this submission. They are the fact that the consent P1A was tendered along with the charge P1 at the outset by the court prosecutor when the first respondent was first charged in the court, the fact that a deputy public prosecutor conducted the prosecution at the trial of this case and the fact that the consent P1A is dated the 7th April 1970 and the first respondent was charged in court for the first time on the 25th April, 1970.

I cannot agree with this submission of the learned deputy public prosecutor. I find that the evidence taken as a whole is not sufficient to establish that the Attorney-General's consent as contained in P1A referred to the facts of this particular case.

If the document signifying the Attorney-General's consent under section 31 of the said Ordinance contains sufficient facts to satisfactorily identify the particular case to which he has given his consent then the document would speak for itself. This does not mean that all the facts as embodied in the charge should have to be set out in the consent.

When the document signifying the consent of the Attorney-General does not contain enough facts to identify the case to which he gave his consent then of course extraneous evidence can be led to supplement the evidence contained in the document. This would be so even if the consent has to be in writing as in the case of the "Trading with the Enemy Act 1914" of Australia referred to in the case of *Berwin* v. *Donohoe*. In that case Higgins J. in his judgment said:

"Even if there were two prosecutions to which the consent would be equally applicable, evidence would be admissible to show to which the consent is applicable; the consent would not be a bad consent."

In the case here it was open to the prosecution to adduce extraneous evidence to show that the consent P1A related to this particular prosecution but no such evidence was forthcoming. The defence challenged this issue regarding the consent of the Attorney-General only at the end of the prosecution case. The prosecution could even then have applied to adduce further evidence. I was informed during the hearing of this appeal that the prosecution elected not to call any further evidence when this challenge was made by the defence.

I next refer to the case of *Chong Tuck Loong* v. *Public Prosecutor*[2] where Thomson J. as he then was, in his judgment there discussed the question of consent under the Prevention of Corruption Ordinance of Malaya. He there made the following observations:

"... if that section (section 12, relating to consent) is not complied with the court has no jurisdiction to try offences

under the Ordinance, and I do not think it can be said to be complied with unless it is clear either on the face of the proceedings or as a matter of reasonable inference that the Public Prosecutor ... has either taken an active part in the prosecution or has consented to the charges brought against the accused after applying his mind at the lowest to the *facta probanda* forming the material of these charges."

The same learned judge in the subsequent case of *Lyn Hong Yap* v. *Public Prosecutor*,[3] referring in his judgment to this very same passage said:

"In making these observations I was concerned with the particular facts of the case under appeal and my attention had not been invited to *Metz's* case. On further consideration I have come to the conclusion that in making these observations I went too far and that they would more accurately state the law if the words, 'either on the face of the proceedings or as a matter of reasonable inference' were omitted."

I respectfully agree with this last observation of Thomson J. This means that the evidence regarding the consent must be such that it should be clear from it, as to the facts of which particular case, the Attorney-General had applied his mind and given his consent. It is not sufficient to prove this fact merely as a matter of reasonable inference.

Reference was also made to the case of *Public Prosecutor* v. *Choy Kok Kuan*[4] both in the hearing before me as well as in the court below. The judgment in this case was based on the earlier remarks of Thomson J. in the case of *Chong Tuck Loong* v. *Public Prosecutor* to which I have already referred above and therefore does not require any further comment now having regard to the subsequent observations of Thomson J. on the same matter.

Let me next refer to the case of *Gokulchand Dwarkadas Moraka* v. *The King*.[5] In that case G. D. Moraka was charged with an offence under the Cotton Cloth and Yarn (Control) Order (1943) in Bombay, and under that Order a sanction from the Provincial Government was necessary to institute a prosecution. The sanction of the Provincial Government was in the following terms: —

"Government is pleased to accord sanction under Cl. 23, Cotton and Yarn (Control) Order, 1943, to the prosecution of Mr. Gokulchand Dwarkadas Moraka for breach of the provisions of cl. 18(2) of the said Order.

By Order of the Governor of Bombay,
(Signed)
Deputy Secretary to Government, Bombay."

There too as it was not clear from the face of the written sanction in reference to the facts of which particular case the sanctioning authority had given its sanction, extraneous evidence was necessary to prove that fact. The Privy Council there held that whatever extraneous evidence that was available on the records was insufficient to establish that the sanction of the sanctioning authority was obtained in relation to the facts of that particular case.

No doubt *Moraka's* case was in respect of a sanction and the present case is in respect of a consent but the underlying principle in question in both the cases remains the same. The learned district judge was right in following the decision in *Moraka's* case regarding this matter.

I find that the written consent, P1A, of the Attorney-General does not, on the face of it, show in reference to the facts of which particular case that consent, P1A, was given. Whatever additional material that is available on the records here is to my mind insufficient to show that the Attorney-General's consent contained in P1A was given in relation to the facts of the present case. That being so the prosecution here has failed to prove that it has complied with the provisions of section 31 of the said Ordinance The learned district judge was right in granting an order of discharge not amounting to an acquittal in respect of the first respondent.

This appeal is dismissed in respect of the first respondent.

For similar considerations, the appeal in respect of the second respondent is also dismissed.

Appeal dismissed.

YEO LONG SENG v. LUCKY PARK (PTE) LIMITED

[O.C.J. (Winslow J.) November 13, 1970]

[Singapore — Suit No. 465 of 1970]

Land Laws — Sale of land by developer — Payment of booking fee — Receipt issued for booking fee — No formal contract — Developer refusing to proceed with sale — Whether enforceable contract — Housing Developers (Control & Licensing) Ordinance, 1965 and the Housing Developers (Amendment) Rules 1967 — Statute of Frauds.

Housing and Development — Housing developers — Contract — Specific performance — Damages.

On September 18, 1969, the plaintiff agreed to purchase a piece of land with a semi-detached house to be built on it, for $52,000 from the defendant who were licensed developers. The plaintiff paid a deposit of $500 for which the defendants issued a receipt in the following forms: "Received from Mr. Yeo Long Seng the sum of $500 being booking fee for the purchase of P/Lot 16 Phase III Lucky Park." On the same day the plaintiff was asked to sign a letter addressed to the defendants which letter contained the terms of instalment payments to be made by the plaintiff to the defendants and which ended with the following paragraphs:- "I hereby agree to sign the agreement within 14 days on receipt of the vendor's notice for signing same; failing which the vendor is entitled to cancel this booking and re-sell the property. I further confirm and agree that the completion date of handing over of house with vacant possession is expected to on or before 31.12.1971."

By a registered letter dated September 19, 1969 addressed to the plaintiff, the defendants purported to inform the plaintiff that his booking was cancelled and they sent a cheque for $500 to the plaintiff as refund of the deposit which he had paid. The plaintiff through his solicitors, returned the cheque informing the defendants that he wished to proceed with the purchase.

In this action the plaintiff claimed for specific performance of the contract and in the alternative for damages for breach of contract. For the plaintiff it was contended that the receipt issued by the defendants for the deposit taken together with the letter of the same date which the plaintiff was asked to sign and hand over to the defendants constituted sufficient written memorandum for the purpose of the Statute of Frauds and accordingly there was a contract at common law. The defendants however claimed that they merely granted the plaintiff an option to purchase a house to be built and that such option was subject to a formal contract of sale in the form given in the Housing Developers (Amend-